

REMARKS

This responds to the Office Action dated August 11, 2009.

No claim is amended. Claims 1-7, 9, 11-37, and 46-55 remain pending in this application.

§ 103 Rejection of the Claims

Claims 1-3, 14-16 and 29-32 are rejected under 35 U.S.C. 103(a) as obvious over Daum et al. (U.S. Patent No. 7,101,339, hereinafter “Daum”) in view of Park et al. (U.S. Patent No. 6,928,324, hereinafter “Park”).

Claims 4-6, 9, 11, 13, 19-20, 25-26, 28, 33-34, 46 and 52 are rejected under 35 U.S.C. 103(a) as being obvious over Daum in view of Park as applied to claims 1-3, 14-16 and 29-32 above, and further in view of Andersson et al. (U.S. Publication 2002/0095189, hereinafter “Andersson”).

Claims 7, 17-18, 21-24, 35-37 and 53-55 are rejected under 35 U.S.C. 103(a) as being obvious over Daum in view of Park as applied to claims 1-3, 14-16 and 29-32 above, and further in view of Hine et al. (U.S. Patent No. 7,142,919, hereinafter “Hine”).

Claims 12, 27 and 47-51 are rejected under 35 U.S.C. 103(a) as being obvious over Daum in view of Park in view of Andersson as applied to claims 4-6, 9, 11, 13, 19-20, 25-26, 28, 33-34, 46 and 52 above, and further in view of Hine.

Thus, Daum is used in the rejection of each of the pending claims 1-7, 9, 11-37, and 46-55.

Applicant respectfully traverses the rejection and submits that Daum, which qualifies as a reference only under 35 U.S.C. §102(e), is not available for supporting obviousness rejections pursuant to 35 U.S.C. §103(c). Applicant respectfully submits that the assignments on record for the present application and Daum provide evidence of the requisite obligation of assignment to avoid their use in support of an obviousness rejection under 35 U.S.C. § 103(c).

The present Application and Daum were, at the time the present invention was made, owned by, or subject to an obligation of assignment to, Cardiac Pacemakers, Inc. The assignment for the present application (U.S. Serial No. 10/696,729) was recorded on March 22,

2004 on Reel 015118, Frame 0597 with the United States Patent and Trademark Office. The assignment for Daum (U.S. Serial No. 10/319,794) was recorded on April 28, 2003 on Reel 013997, Frame 0490 with the United States Patent and Trademark Office.

Thus, Applicant respectfully submits that claims 1-7, 9, 11-37, and 46-55 are patentable pursuant to 35 U.S.C. §103(c). See MPEP §§706.02(I)(1)-(2). In making this procedural traversal, Applicant does not address the arguments of record and reserves the right to traverse same if the procedural traversal is not accepted.

Applicant respectfully requests reconsideration and allowance of claims 1-7, 9, 11-37, and 46-55.

CONCLUSION

Applicant respectfully submits that the claims are in condition for allowance, and notification to that effect is earnestly requested. The Examiner is invited to telephone Applicant's representative at (612) 373-6965 to facilitate prosecution of this application.

If necessary, please charge any additional fees or deficiencies, or credit any overpayments to Deposit Account No. 19-0743.

Respectfully submitted,

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Date November 12, 2009

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CERTIFICATE UNDER 37 CFR 1.8: The undersigned hereby certifies that this correspondence is being filed using the USPTO's electronic filing system EFS-Web, and is addressed to: Mail Stop Amendment, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on this 12th day of November, 2009.

Kate Gannon

/ Kate Gannon /

Name

Signature